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November 2, 2023

BY ECF

Honorable Ona T. Wang
United States Magistrate Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED.

Re: David Maxwell v. State of New York, et al.,
23 Civ. 3563 (JPC) (OTW)

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York and the attorney assigned to the above-referenced matter. I write on behalf of the Office of the Corporation Counsel (hereinafter "this Office") as an interested party to respectfully request that the Court (1) *sua sponte* grant an enlargement of time for Officer Fatmir Vucetovic to respond to the Amended Complaint until thirty (30) days after all other defendants have been served with process; and (2) adjourn the November 14, 2023 Initial Conference and all corresponding deadlines until after such time as the defendants have responded to the Amended Complaint. This is this Office's second request of such deadlines. The first request was made because no defendant had yet been served with process. Plaintiff consents to this request.

By way of background, Plaintiff brings this action pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, claims of false arrest against New York City Police Department ("NYPD") Officer Vucetovic and NYPD Sergeant Roth (identified in the Complaint as Sergeant "Moth,") and a denial of medical treatment claim against New York City Fire Department ("FDNY") Emergency Medical Service ("EMS") worker Gerald Carr related to Plaintiff's arrest at his apartment on May 4, 2021. (See ECF No. 10).

Officer Vucetovic's time to respond to the Amended Complaint is November 6, 2023. (See ECF No. 20). The City of New York, Sergeant Howard Roth, and Gerald Carr have not been

served with process.¹ A *sua sponte* extension of time for Officer Vucetovic to respond to the Amended Complaint until the other three remaining defendants have been served (including the City) will allow this Office to file one streamlined response to the Amended Complaint, which will promote judicial efficiency. This extension would also allow this Office time to conduct an inquiry to determine whether it will represent the individual defendants. See General Municipal Law § 50(k); Mercurio v. City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985); Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

Moreover, until such time as the defendants have been served and responded to the Amended Complaint, a Case Management Plan and Initial Conference is premature. Accordingly, for the sake of efficiency, this Office respectfully requests (1) that the Court extend the time for Officer Vucetovic to respond to the Amended Complaint from November 6, 2023 until thirty (30) days after Sergeant Roth, Gerald Carr, and the City are served with process; and (2) an adjournment of the November 14, 2023 conference and corresponding deadlines, including filing the Proposed Case Management Plan, until after the defendants have responded to the Amended Complaint.

Thank you for your time and consideration.

Respectfully submitted,

/s/ *Bailey Forcier*

Bailey Forcier

Assistant Corporation Counsel

cc: **Via Electronic Mail**
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Plaintiff pro se
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Application **GRANTED**. The Initial Case Management Conference scheduled for November 14, 2023, is **ADJOURNED** to **Wednesday, January 10, 2024 at 10:00 a.m.**

SO ORDERED.



Ona T. Wang
U.S.M.J.

11/8/23

¹ Service was not accepted at the 47th Precinct for Sergeant Roth as the name on the summons was incorrectly spelled as Sergeant “Moth.” Plaintiff has been notified of the correct name and address where Sergeant Roth can be served.